

111TH CONGRESS  
1ST SESSION

# H. R. 1092

To amend the Employee Retirement Income Security Act of 1974, Public Health Service Act, and the Internal Revenue Code of 1986 to prohibit discrimination in group health coverage and individual health insurance coverage.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 13, 2009

Mr. KAGEN introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Education and Labor and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the Employee Retirement Income Security Act of 1974, Public Health Service Act, and the Internal Revenue Code of 1986 to prohibit discrimination in group health coverage and individual health insurance coverage.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

### 3 **SECTION 1. SHORT TITLE; PURPOSE.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “No Discrimination in Health Insurance Act of 2009”.

6 (b) PURPOSE.—It is the purpose of this Act to—

1 (1) eliminate the application of pre-existing con-  
 2 dition exclusions in all group health coverage policies  
 3 and all individual health insurance policies; and

4 (2) provide that all health insurance issuers de-  
 5 termine and openly disclose the premium price for  
 6 each and every group health insurance policy and  
 7 each and every individual health insurance policy,  
 8 such that within a specific metropolitan statistical  
 9 area, or other geographic area, all such premiums  
 10 and prices established by a given issuer shall be uni-  
 11 form.

12 **SEC. 2. NONDISCRIMINATION IN GROUP HEALTH COV-**  
 13 **ERAGE.**

14 (a) APPLICATION UNDER THE EMPLOYEE RETIRE-  
 15 MENT INCOME SECURITY ACT OF 1974.—

16 (1) ELIMINATION OF PREEXISTING CONDITION  
 17 EXCLUSIONS.—Section 701 of the Employee Retire-  
 18 ment Income Security Act of 1974 (29 U.S.C. 1181)  
 19 is amended—

20 (A) by amending the heading to read as  
 21 follows: “**ELIMINATION OF PREEXISTING**  
 22 **CONDITION EXCLUSIONS**”;

23 (B) by amending subsection (a) to read as  
 24 follows:

1       “(a) IN GENERAL.—A group health plan, and a  
2 health insurance issuer offering group health insurance  
3 coverage, with respect to a participant or beneficiary—

4               “(1) may not impose any pre-existing condition  
5 exclusion; and

6               “(2) in the case of a group health plan that of-  
7 fers medical care through health insurance coverage  
8 offered by a health maintenance organization, may  
9 not provide for an affiliation period with respect to  
10 coverage through the organization.”;

11               (C) in subsection (b), by striking para-  
12 graph (3) and inserting the following:

13               “(3) AFFILIATION PERIOD.—The term ‘affili-  
14 ation period’ means a period which, under the terms  
15 of the health insurance coverage offered by the  
16 health maintenance organization, must expire before  
17 the health insurance coverage becomes effective.”;

18               (D) by striking subsections (c), (d), (e),  
19 and (g); and

20               (E) by redesignating subsection (f) (relat-  
21 ing to special enrollment periods) as subsection  
22 (c).

23       (2) CLERICAL AMENDMENT.—The item in the  
24 table of contents of such Act relating to section 701  
25 is amended to read as follows:

“Sec. 701. Elimination of pre-existing condition exclusions.”.

1 (b) APPLICATION UNDER THE INTERNAL REVENUE  
2 CODE OF 1986.—

3 (1) ELIMINATION OF PREEXISTING CONDITION  
4 EXCLUSIONS.—Section 9801 of the Internal Revenue  
5 Code of 1986 is amended—

6 (A) by amending the heading to read as  
7 follows: “**ELIMINATION OF PREEXISTING**  
8 **CONDITION EXCLUSIONS**”;

9 (B) by amending subsection (a) to read as  
10 follows:

11 “(a) IN GENERAL.—A group health plan with respect  
12 to a participant or beneficiary may not impose any pre-  
13 existing condition exclusion.”;

14 (C) by striking paragraph (3) of subsection  
15 (b);

16 (D) by striking subsections (c), (d), and  
17 (e); and

18 (E) by redesignating subsection (f) (relat-  
19 ing to special enrollment periods) as subsection  
20 (c).

21 (2) CLERICAL AMENDMENT.—The item in the  
22 table of sections of chapter 100 of such Code relat-  
23 ing to section 9801 is amended to read as follows:

“Sec. 9801. Elimination of preexisting condition exclusions.”.

24 (c) APPLICATION UNDER PUBLIC HEALTH SERVICE  
25 ACT.—

1           (1) ELIMINATION OF PREEXISTING CONDITION  
2           EXCLUSIONS.—Section 2701 of the Public Health  
3           Service Act (42 U.S.C. 300gg) is amended—

4                   (A) by amending the heading to read as  
5           follows: “**ELIMINATION OF PREEXISTING**  
6           **CONDITION EXCLUSIONS**”;

7                   (B) by amending subsection (a) to read as  
8           follows:

9           “(a) IN GENERAL.—A group health plan, and a  
10          health insurance issuer offering group health insurance  
11          coverage, with respect to a participant or beneficiary—

12                   “(1) may not impose any pre-existing condition  
13          exclusion; and

14                   “(2) in the case of a group health plan that of-  
15          fers medical care through health insurance coverage  
16          offered by a health maintenance organization, may  
17          not provide for an affiliation period with respect to  
18          coverage through the organization.”;

19                   (C) in subsection (b), by striking para-  
20          graph (3) and inserting the following:

21                   “(3) AFFILIATION PERIOD.—The term ‘affili-  
22          ation period’ means a period which, under the terms  
23          of the health insurance coverage offered by the  
24          health maintenance organization, must expire before  
25          the health insurance coverage becomes effective.”;

1 (D) by striking subsections (c), (d), (e),  
2 and (g); and

3 (E) by redesignating subsection (f) (relat-  
4 ing to special enrollment periods) as subsection  
5 (e).

6 (2) GUARANTEED AVAILABILITY OF GROUP  
7 HEALTH INSURANCE COVERAGE TO EMPLOYERS OF  
8 ALL SIZES IN THE GROUP MARKET.—Section 2711  
9 of such Act (42 U.S.C. 300gg–11) is amended—

10 (A) in subsection (a)—

11 (i) in the heading, by striking  
12 “SMALL”;

13 (ii) in paragraph (1), by striking “(c)  
14 through (f)” and inserting “(b) through  
15 (d)”;

16 (iii) in paragraph (1), in the matter  
17 before subparagraph (A), by striking  
18 “small”;

19 (iv) in paragraph (1)(A), by striking  
20 “small employer (as defined in section  
21 2791(e)(4))” and inserting “employer”;

22 (v) in paragraph (2), by striking  
23 “small” each place it appears; and

1 (vi) in paragraph (2), by striking  
 2 “coverage to a” and inserting “coverage to  
 3 an”;

4 (B) by striking subsection (b);

5 (C) in subsections (c), (d), and (e), by  
 6 striking “small” each place it appears; and

7 (D) by striking subsection (f).

8 (3) APPLICATION OF UNIFORM PREMIUMS.—

9 Section 2711 of such Act, as so amended, is amend-  
 10 ed by inserting after subsection (a) the following  
 11 new subsection:

12 “(b) APPLICATION OF UNIFORM PREMIUM.—

13 “(1) IN GENERAL.—Each and every health in-  
 14 surance issuer that offers health insurance coverage  
 15 in the group market in a State shall—

16 “(A) shall charge the same premium price  
 17 for the same coverage; and

18 “(B) shall openly disclose, in a manner  
 19 specified by the Secretary and including disclo-  
 20 sure through the Internet, the amount of the  
 21 premium price that is being charged for the  
 22 coverage involved.

23 “(2) UNIFORM APPLICATION TO FAMILY COV-  
 24 ERAGE AND TO DIFFERENT GEOGRAPHIC AREAS.—

25 Paragraph (1) shall be applied uniformly—

1 “(A) for coverage on the basis of such dif-  
 2 ferent family categories as the Secretary ap-  
 3 proves; and

4 “(B) for coverage within each metropolitan  
 5 statistical area and for coverage within the por-  
 6 tions of a State that are not within a metropoli-  
 7 tan statistical area.

8 “(3) APPLICATION.—Paragraph (1) shall not be  
 9 construed as preventing variations in premiums that  
 10 result from the application of a uniform monthly  
 11 premium over different policy years.”.

12 (4) APPLICATION OF NONDISCRIMINATION  
 13 RULES TO NONFEDERAL GOVERNMENTAL PLANS.—  
 14 Section 2721(b)(2)(A) of such Act (42 U.S.C.  
 15 300gg–21(b)(2)(A)) is amended by striking “sub-  
 16 parts 1 through 3” and “such subparts” and insert-  
 17 ing “subpart 2” and “such subpart”, respectively.

18 (d) EFFECTIVE DATE.—

19 (1) IN GENERAL.—The amendments made by  
 20 this section shall apply to plan years beginning on  
 21 or after January 1, 2010, regardless of whether an  
 22 individual is provided coverage under a group health  
 23 plan before such date.

24 (2) SPECIAL RULE FOR COLLECTIVE BAR-  
 25 GAINING AGREEMENTS.—In the case of a group



1 health plan maintained pursuant to one or more col-  
2 lective bargaining agreements between employee rep-  
3 resentatives and one or more employers ratified be-  
4 fore the date of the enactment of this Act, the  
5 amendments made by this section shall not apply to  
6 plan years beginning before the later of—

7 (A) the date on which the last of the col-  
8 lective bargaining agreements relating to the  
9 plan terminates (determined without regard to  
10 any extension thereof agreed to after the date  
11 of the enactment of this Act), or

12 (B) January 1, 2011.

13 For purposes of subparagraph (A), any plan amend-  
14 ment made pursuant to a collective bargaining  
15 agreement relating to the plan which amends the  
16 plan solely to conform to any requirement under the  
17 amendments made by this section shall not be treat-  
18 ed as a termination of such collective bargaining  
19 agreement.

20 **SEC. 3. NONDISCRIMINATION IN INDIVIDUAL HEALTH IN-**  
21 **SURANCE.**

22 (a) IN GENERAL.—Section 2741 of the Public Health  
23 Service Act (42 U.S.C. 300gg–41) is amended—

1 (1) by amending the heading to read as follows:

2 **“GUARANTEED ISSUE OF INDIVIDUAL HEALTH**  
3 **INSURANCE COVERAGE; UNIFORM PREMIUMS”**;

4 (2) by amending subsections (a) and (b) to read  
5 as follows:

6 **“(a) IN GENERAL.—**

7 **“(1) GUARANTEED ISSUE.—**Subject to the suc-  
8 ceeding subsections of this section, each and every  
9 health insurance issuer that offers health insurance  
10 coverage (as defined in section 2791(b)(1)) in the in-  
11 dividual market to individuals residing in an area  
12 may not, with respect to an eligible individual (as  
13 defined in subsection (b)) residing in the area who  
14 desires to enroll in individual health insurance cov-  
15 erage—

16 **“(A) decline to offer such coverage to, or**  
17 **deny enrollment of, such individual; or**

18 **“(B) impose any preexisting condition ex-**  
19 **clusion (as defined in section 2701(b)(1)(A))**  
20 **with respect to such coverage.**

21 **“(2) APPLICATION OF UNIFORM PREMIUM.—**

22 **“(A) IN GENERAL.—**Each and every health  
23 insurance issuer that offers health insurance  
24 coverage in the individual market in a State—

1 “(i) shall charge the same premium  
2 price for the same coverage;

3 “(ii) if the issuer offers such coverage  
4 in the group market in the State, shall  
5 charge the same premium for the same  
6 coverage offered in the group market; and

7 “(iii) shall openly disclose, in a man-  
8 ner specified by the Secretary and includ-  
9 ing disclosure through the Internet, the  
10 amount of the premium price that is being  
11 charged for the coverage involved.

12 “(B) UNIFORM APPLICATION TO FAMILY  
13 COVERAGE AND TO DIFFERENT GEOGRAPHIC  
14 AREAS.—Subparagraph (A) shall be applied  
15 uniformly—

16 “(i) for coverage on the basis of such  
17 different family categories as the Secretary  
18 approves; and

19 “(ii) for coverage within each metro-  
20 politan statistical area and for coverage  
21 within the portions of a State that are not  
22 within a metropolitan statistical area.

23 “(C) APPLICATION.—Subparagraph (A)  
24 shall not be construed as preventing variations  
25 in premiums that result from the application of

1 a uniform monthly premium over different pol-  
2 icy years.

3 “(b) ELIGIBLE INDIVIDUAL DEFINED.—In this part,  
4 the term ‘eligible individual’ means, with respect to an  
5 area, an individual who resides in such area, without re-  
6 gard to the period of such residency, and who is—

7 “(1) a citizen or national of the United States;

8 “(2) an alien lawfully admitted to the United  
9 States for permanent residence; or

10 “(3) an alien who is otherwise lawfully residing  
11 in the United States.”;

12 (3) by striking subsection (c);

13 (4) by redesignating subsection (d) and the first  
14 subsection (e) (relating to application of financial ca-  
15 pacity limits) as subsections (c) and (d), respec-  
16 tively;

17 (5) in paragraph (1) of the subsection (e) relat-  
18 ing to market requirements, by striking “or through  
19 one or more bona fide associations, or both”; and

20 (6) by striking subsection (f) and inserting the  
21 following:

22 “(f) UNIFORM RULES TO RESPOND TO ADVERSE SE-  
23 LECTION.—

1           “(1) IN GENERAL.—The Secretary may estab-  
2       lish rules for uniform application that are designed  
3       to deter individuals—

4           “(A) from enrolling in individual health in-  
5       surance coverage only after they develop an ill-  
6       ness or injury for which such coverage applies;  
7       and

8           “(B) from disenrolling from health insur-  
9       ance coverage for periods in which they are un-  
10      likely (or less likely) to require such coverage.

11          “(2) CONSIDERATIONS.—Such rules may take  
12      into account the financial and other circumstances  
13      of individuals for not being so enrolled or for so  
14      disenrolling.”.

15          (b) CONFORMING AMENDMENT.—Section 2742(b) of  
16      such Act (42 U.S.C. 300gg-42(b)) is amended by striking  
17      paragraph (5).

18          (c) EFFECTIVE DATE.—The amendments made by  
19      this section shall apply with respect to health insurance  
20      coverage offered, sold, issued, renewed, in effect, or oper-  
21      ated in the individual market after December 31, 2009.

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